

Attorney General

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December 10, 1987

The Honorable John Hays
Arizona State Senator
State Capitol - Senate Wing
Phoenix, Arizona 85007

Re: I87-154 (R87-014)

Dear Senator Hays:

You have asked whether specific legislation is needed to have the interest revert to the Game, Non-Game, Fish and Endangered Species Fund (the "Non-Game Fund") which interest accrues to that fund. We conclude that the interest should be credited to that fund and that no legislation is needed.

The Non-Game Fund was established by Laws 1982 (2nd Reg. Sess.) Ch. 267 (now A.R.S. § 17-268), which also provided that deductible donations and contributions to the fund could be made through state income tax returns (now A.R.S. § 43-615). A.R.S. §§ 17-268 and 43-615 were codified in Laws 1984 (2nd Reg. Sess.) Ch. 76.

Laws 1982 (2nd Reg. Sess.) Ch. 267 contained the following language when enacted in 1982:

Sec. 3. Appropriation; reversion

A. Notwithstanding the provisions of section 1 of this act, the sum of forty-five thousand dollars is appropriated from the game, non-game, fish and endangered species fund in fiscal year 1982-1983 to the department of revenue to carry out the purposes of this act.

B. All monies unexpended and unencumbered on July 1, 1983 from the

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appropriation in subsection A of this section shall revert to the game, non-game, fish and endangered species fund.

A.R.S. § 17-268 states:

A. A game, non-game, fish and endangered species fund is established to be used by the commission for game, non-game, fish and endangered species purposes. Monies in the fund are subject to annual legislative appropriation pursuant to § 35-143.01.

B. Monies received by this state pursuant to § 43-615 shall be deposited in the fund by the state treasurer.

A.R.S. § 35-143.01 states:

A. All monies deposited by the state treasurer in special agency funds of self-supporting regulatory agencies, as provided in § 35-142, to be used by such agency for administration and enforcement, shall be subject to annual legislative appropriation.

B. No special fund self-supporting regulating agency may expend more funds than are appropriated by the legislature for a fiscal year.

C. Any unexpended or unencumbered balance of funds remaining in the special funds of self-supporting regulatory agencies as provided in § 35-142 at the end of the fiscal year shall not revert to the general fund.

A.R.S. § 43-615 provides in pertinent part that:

A. . . . [T]he taxpayer may designate an amount of the taxpayer's refund as a voluntary contribution to the fund

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C. The taxpayer may also donate any amount to the . . . fund, in lieu of or in addition to the designated portion of his income tax refund

(Emphasis added.) The monies which comprise the Non-Game Fund are private funds donated by citizens from the state tax refund monies to which they are entitled.

In Ariz. Atty. Gen. Op. 76-130, the Arizona Attorney General addressed the question of whether the interest earnings on funds donated to the Crippled Children's Services for the benefit of its program beneficiaries and thereafter deposited with the State Treasurer as provided by law should be credited to the special donation fund or to the state general fund. In concluding that the interest earned on the fund should be credited to the special donation fund rather than to the general fund, the Attorney General stated:

In legal contemplation, private donations to the State for the support of state activities create charitable trusts with the recipient agency acting as a fiduciary.

Id. at page 4.

In Navajo Tribe v. Arizona Department of Administration, 111 Ariz. 279, 528 P.2d 623 (1975), the court stated:

Payment of funds into the state treasury does not necessarily vest the state with title to those funds. *Ross v. Gross*, 300 Ky. 337, 188 S.W.2d 475 (1945). Only monies raised by the operation of some general law become public funds. *Cyr & Evans Contracting Co. v. Graham*, 2 Ariz. App. 196, 407 P.2d 385 (1965). Custodial funds are not state monies. *MacManus v. Love*, 499 P.2d 609 (Colo. 1972). The term "public funds" refers to funds belonging to the state and does not apply to funds for the benefit of contributors for which the state is a mere custodian or conduit. *Pensioners Protective Assn. v. Davis*, 112 Colo. 535, 150 P.2d 974 (1944).

111 Ariz. at 280, 528 P.2d at 624.

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Because the monies^{1/} in the Non-Game Fund are private monies contributed specifically for game, non-game, fish and endangered species purposes and not public monies raised by general law, they are custodial funds. See also Ariz. Atty. Gen. Ops. 77-230 and I81-022. Thus, reading A.R.S. §§ 17-268, 35-143.01, 43-615, Laws 1982, Ch. 267 and Navajo Tribe together, it becomes clear that the interest income derived from the investment of the private funds donated to the state for game, non-game, fish and endangered species purposes should be credited to that special donation account (the Non-Game Fund). Accordingly, there is no need for additional legislation to have the interest revert to the Non-Game Fund in which the interest accrues.

Your inquiry noted that the interest accruing on monies in the Non-Game Fund are, and have been, reverting to the Game and Fish Fund. In accordance with our conclusion that the interest in the Non-Game Fund should remain there, we believe that any transfer of the interest to the Game and Fish Fund is inappropriate.

Sincerely,



BOB CORBIN
Attorney General

BC:JRA:lfc

^{1/}The definition of "interest" includes "the money so paid." Webster's Third International Dictionary (Unabridged) 1976, p. 1178. "Monies" is defined as "the plural of money." Id. at 1460.